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DENNIS MONTGOMERY and
12 THE MONTGOMERY FAMILY TRUST

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15
16 DENNIS MONTGOMERY and the
MONTGOMERY FAMILY TRUST,

17 Plaintiffs,

18 vs.

19 ETREPPID TECHNOLOGIES, LLC, WARREN
20 TREPP, and the UNITED STATES
DEPARTMENT OF DEFENSE,

21 Defendants.
22

23 AND RELATED CASES.
24

) Case No. 3:06-CV-00056-PMP-VPC
) BASE FILE

) (Consolidated with Case No. 3:06-CV-
) 00145-PMP-VPC)

) **MOTION OF LINER GRODE STEIN**
) **YANKELEVITZ SUNSHINE**
) **REGENSTREIF & TAYLOR LLP FOR**
) **LEAVE TO WITHDRAW AS COUNSEL**
) **OF RECORD FOR THE**
) **MONTGOMERY PARTIES**

) **[DECLARATION OF ELLYN S.**
) **GAROFALO AND EXHIBITS FILED**
) **CONCURRENTLY HEREWITH]**

1 Pursuant to Rule 46 of the Nevada Court Rules and Rule 1.16 of the Nevada Rules of
2 Professional Conduct (“NRPC 1.16”), Liner Grode Stein Yankelevitz Sunshine Regenstreif &
3 Taylor LLP (the “Liner Firm”), and each attorney that has appeared for the Liner Firm, moves this
4 Court for an order granting leave to withdraw as counsel of record for debtors Dennis and Brenda
5 Montgomery and Montgomery Family Trust (collectively, the “Montgomery Parties”) in
6 Montgomery v. eTreppid Technologies, United States District Court, District of Nevada Case No.
7 3:06-CV-00056-PMP (the “eTreppid Action”).

8 NRPC 1.16(b)(6) provides that a lawyer may withdraw from representing a client upon a
9 showing of good cause. There is good cause to allow the Liner Firm to withdraw because an actual
10 conflict has arisen between the Montgomery Parties and the Liner Firm. On June 26, 2009, the
11 Montgomery Parties filed a Petition under Chapter 7 of the United States Bankruptcy Code.¹
12 (Declaration of Ellyn S. Garofalo (“Garofalo Decl.”), ¶ 2, Exhibit A.) In connection with the
13 bankruptcy proceedings, on July 28, 2009, the Montgomery Parties submitted a bankruptcy
14 schedule listing their personal property. The list includes purported claims against the Liner Firm
15 and its individual attorneys for legal malpractice and misrepresentation. (Garofalo Decl., ¶ 3,
16 Exhibit B.) The Montgomery Parties’ bankruptcy schedules render the Liner Firm directly adverse
17 to the Montgomery Parties. Hence, an actual conflict now exists between the Liner Firm and the
18 Montgomery Parties. Rule 3-310 of the California Rules of Professional Conduct (“Rule 3-310”)
19 prohibits the continued representation of a client where an actual conflict arises. The Liner Firm is
20 a California law firm and the Montgomery Parties are residents of California. Accordingly, the
21 Liner Firm’s withdrawal is mandated by Rule 3-310.

22 The Montgomery Parties will not be prejudiced by the Liner Firm’s withdrawal. In
23 November 2008, the Montgomery Parties entered into a Settlement Agreement which fully
24 resolved claims and counterclaims in the eTreppid Action. (Garofalo Decl., ¶ 5.) Pursuant to the
25 Settlement Agreement, on December 11, 2008, Confessions of Judgment were entered against the
26 Montgomery Parties and on February 19, 2009, the Nevada District Court entered an Order

27 ¹ The Liner Firm has obtained relief from the automatic stay in bankruptcy to bring this motion to
28 withdraw. (Garofalo Decl., Exhibit C.)

1 dismissing all claims and counterclaims in the eTreppid Action. (Docket # 962.) Although the
2 underlying litigation is resolved, the Nevada District Court retained jurisdiction over post-judgment
3 collection proceedings. However, issues relating to collection are now within the purview of the
4 California bankruptcy court and on December 18, 2009, the Court approved the Trustee's petition
5 to be admitted *pro hac vice*. (Docket # 1138.)

6 For the foregoing reasons, there is good cause to grant the Liner Firm's Motion to
7 Withdraw. The Montgomery Parties have been notified of and served with this Motion at their last
8 known address, 6 Toscana Way W., Rancho Mirage, CA 92770. (Garofalo Dec., ¶ 6.)

9
10 Dated: January 8, 2009

Respectfully submitted,

11 LINER GRODE STEIN YANKELEVITZ
12 SUNSHINE REGENSTREIF & TAYLOR LLP

13 By: /s/ Ellyn S. Garofalo
14 Ellyn S. Garofalo
15 Attorneys for DENNIS MONTGOMERY and
16 THE MONTGOMERY FAMILY TRUST
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Liner Grode Stein Yankelevitz Sunshine Regenstein & Taylor LLP, and that on January 8, 2009, I caused to be served the within document described as **MOTION OF LINER GRODE STEIN YANKELEVITZ SUNSHINE REGENSTREIF & TAYLOR LLP FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD FOR THE MONTGOMERY PARTIES** on the interested parties in this action as stated below:

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☒ **[ELECTRONIC]** By filing the document(s) electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document(s) to the persons listed above at their respective email address.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 8, 2009, at Los Angeles, California.

Ellyn S. Garofalo
 (Type or print name)

/s/ Ellyn S. Garofalo
 (Signature)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP, and that on January 8, 2009, I caused to be served the within document described as **MOTION OF LINER GRODE STEIN YANKELEVITZ SUNSHINE REGENSTREIF & TAYLOR LLP FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD FOR THE MONTGOMERY PARTIES** on the interested parties in this action as stated below:

Dennis Montgomery
6 Toscana Way W.
Rancho Mirage, CA 92770

Montgomery Family Trust
c/o Dennis Montgomery
6 Toscana Way W.
Rancho Mirage, CA 92770

Brenda Montgomery
6 Toscana Way W.
Rancho Mirage, CA 92770

☒ **[BY MAIL]** By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in affidavit.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 8, 2009, at Los Angeles, California.

Ellyn S. Garofalo

(Type or print name)

/s/ Ellyn S. Garofalo

(Signature)